



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Minutes of the August 13, 2003 meeting of the
Commission on Governmental Ethics and Election Practices
held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Andrew Ketterer; Hon. David N. Ott; Dr. Terrence J. MacTaggart. Staff:
Executive Director Jonathan Wayne; Counsel Phyllis Gardiner; PAC Registrar
Diana True; Administrative Assistant Kendra Danforth.

At 9:08 a.m., Chair Ketterer convened the meeting. The Commission considered the
following items:

Agenda Item #1 – Ratification of Minutes of June 18, 2003 Meeting

Dr. MacTaggart moved, Mr. Ott seconded, and the members voted unanimously to adopt
the draft minutes of the June 18, 2003 meeting.

Agenda Item #2 – PAC Contribution Reporting Issue

The Commissioners tabled this item until later in the meeting because two witnesses were
expected to arrive late.

Agenda Item #3 - Rights Association of Washington

A request for investigation was filed against a citizens' group, the Rights Association of
Washington (RAW), stating that the group was required to register as a political action
committee and file campaign finance reports. Because there was no evidence that RAW's
activities extended beyond promoting municipal candidates and ballot questions, the
Executive Director recommended to the members of the Commission that no registration
or reporting was required and no further investigation appeared to be necessary. Mr. Ott
moved, Dr. MacTaggart seconded, and the members voted unanimously to adopt the
Director's recommendation and to find that no further action was required in this matter.

Agenda Item #4 – Christian Civic League of Maine

Stephen Whiting of the Whiting Law Firm in Portland, Maine made a presentation on
behalf of the Christian Civic League of Maine, the Christian Education League, and the
Christian Action League. All three groups plan some activities to oppose the casino
gambling and slot machine questions on the general election ballot. The Christian Action
League is a political action committee set up by the Christian Civic League specifically for
political activities, and it intends to file PAC campaign finance reports.

The other two groups - the Christian Civic League of Maine and the Christian Education League - intend to file reports under 21-A M.R.S.A. §1056-B. Money spent by these two groups will come from the general funds of these organizations. If any contributions are received by these two groups that are designated for the ballot questions, they will be returned to the contributors with a request that the contributions be sent instead to the Christian Action League.

Dr. MacTaggart asked if an organization's activities in opposition to a ballot question were reported at business meetings of the organization and it became known that the campaign activities were part of the organization's *raison d'être*, how would the organization identify and report contributions that were made to oppose the ballot question. Mr. Whiting responded that the contributions would not need to be reported unless members were explicitly solicited to oppose the ballot questions.

Ms. Gardiner stated that as a result of the Volle court decision, the "major purpose" concept was built into the definition of a PAC, and that if an organization's major purpose is involvement in political activity, all of its contributions and expenditures are reported. If an organization does not have political activity as its major purpose, however, only those contributions or expenditures that are specifically related to political activity are required to be reported.

Dr. MacTaggart asked what action should the Commission take, and what vulnerabilities would the Christian Civic League have if a party filed a complaint against the organization. Ms. Gardiner stated that if the Commission issues guidance to the organization, the Christian Civic League could state that it made an effort to follow the Commission's advice. Dr. MacTaggart recommended to the Chair that at some point the Commission consider how to respond to requests for guidance without adjudicating a matter or positioning the Commission as a counsel for an organization.

Mr. Ott asked if the organization reported a large amount of money on newspaper advertisements educating the public on the evils of gambling, whether those expenditures should be viewed as an effort to influence the casino gambling initiative. He stated that the policy of the PAC law is to enlighten the public on who has contributed to the campaign, but that the organizations would not be disclosing which contributors had funded the advertisements. Ms. Gardiner responded that the expenditures would be required to be reported. Mr. Ott observed that the public wouldn't know who contributed the funds.

Chair Ketterer asked the staff what form the Commission should use to offer advice on this issue. Mr. Wayne responded that the Christian Civic League has requested written guidance.

Dr. MacTaggart recommended that the Commission should not get into the business of advising the organization on how it should manage its fundraising. He proposed that the Commission direct Mr. Wayne to draft advice to all organizations that are making expenditures to support or oppose the ballot questions. Mr. Ott stated his agreement with

the proposal, and said that the Commission action should not be drafted specifically for the Christian Civic League.

Chair Ketterer requested that Mr. Wayne draft this notice. Dr. MacTaggart proposed that the members review the notice. Dr. MacTaggart moved that the staff prepare an advisory memorandum to be reviewed by the Commissioners and posted on the Commission's Web site. Mr. Ott seconded the motion, and the members voted unanimously to adopt the motion.

Mr. Ott stated that it was worthy to note that the Christian Civic League came forward to present this issue to the Commission in advance of its obligation to file a report. Chair Ketterer stated his agreement, and thanked the organization's staff and counsel.

Agenda Item #5 – Deborah Danuski

Deborah Danuski was a Clean Election Act candidate for State Representative in the 2002 elections. On or around November 1, 2002, her campaign discovered that the Bangor Letter Shop inadvertently had failed to deliver one of her campaign mailings to the Post Office. Her campaign purchased \$999.00 in postage to mail the literature. After the election, the shop mailed a bill for \$355.95 to cover the printing for the mailing. Because the candidate had only \$284 of Clean Election Funds to pay the bill, she paid the remaining \$72 out of her personal funds.

The Commission members considered a letter from Ms. Danuski and discussed the appropriate amount of any monetary penalty. Dr. MacTaggart moved, Mr. Ott seconded, and the members voted unanimously to find her in violation of spending more than she was authorized as an MCEA candidate, and to assess a civil penalty of \$25.

Agenda Item #6 – Richard Davis Hart

Richard Davis Hart was a traditionally financed candidate for State Senate in the 2002 elections. On August 5, 2002, the Libertarian Party of Maine paid \$365 for a mailing on Mr. Hart's behalf. After considering a letter submitted by the candidate, Mr. Ott moved, Dr. MacTaggart seconded, and the members voted unanimously to find Mr. Hart in violation of accepting a contribution in excess of the \$250 limit.

Agenda Item #7 – Andrea Cianchette Maker

Andrea Cianchette Maker filed two monthly lobbyist reports that were due on July 15, 2003 one day late. The Commission members considered a written request by Ms. Maker for a waiver of the penalty. Dr. MacTaggart moved, Mr. Ott seconded, and the Commission members voted unanimously to assess a total penalty of \$200 for the two late reports.

Agenda Item #8 – Catherine Gavin

Catherine Gavin filed a monthly lobbyist report that was due on July 15, 2003 seven days late. The Commission members considered a written request by Ms. Gavin for a waiver of the penalty. Dr. MacTaggart moved, Mr. Ott seconded, and the Commission members voted unanimously to assess a penalty of \$100 for the late report.

Agenda Item #9 – Jill Duson and Douglas Carr

Jill Duson and Douglas Carr are lobbyists employed at the firm of Perkins, Thompson, Hinckley & Keddy. They filed a total of three monthly lobbyist reports that were due on July 15, 2003 one day late. The Commission considered a letter requesting a waiver of the penalties that was submitted on their behalf. Dr. MacTaggart moved, Mr. Ott seconded, and the Commission members voted unanimously to assess a total penalty of \$150 for the three late reports.

Agenda Item #10 – Rochelle Goldman

On June 23, 2003, Ms. Goldman filed two reports that were due on May 15, 2003 and June 16, 2003. The Commission considered a letter requesting a waiver submitted by Lafayette L. Crump. Dr. MacTaggart moved, Mr. Ott seconded, and the Commission members voted unanimously to assess a total penalty of \$150 for the two late reports.

Agenda Item #11- Verrill & Dana LLP

John Nutting, Beth Dobson, and James Cohen are lobbyists employed by the firm of Verrill & Dana. They filed a total of seven monthly lobbyist reports that were due on July 15, 2003 one day late. The Commission considered a presentation by Mr. Nutting requesting a waiver of the penalties. Dr. MacTaggart moved, Mr. Ott seconded, and the Commission members voted unanimously to assess a total penalty of \$350 for the seven late reports.

Agenda Item #12 – MCEA Distribution Amounts for 2004

The Commission's Executive Director presented the staff's calculations of the initial distribution amounts for certified MCEA candidates in the 2004 elections. Dr. MacTaggart moved, Mr. Ott seconded, and the members voted unanimously to adopt the distribution amounts.

Agenda Item #13 – Rep. John Piotti

Mr. Wayne raised a question posed by Representative John Piotti. The Representative is employed by Coastal Enterprises, Inc., which previously had been awarded a two-year contract from the Department of Agriculture, Food and Rural Resources to run the Farms for the Future program. Because of a change in the funding of the program, Rep. Piotti expects that legislation will come before the Agriculture, Forestry, and Conservation Committee, on which he sits. Rep. Piotti testified before the Commission at its March 2003 meeting that his compensation would not be increased if his employer is awarded the contract in the future.

Mr. Ott stated that there appeared to be no conflict of interest because no personal remuneration would flow to Rep. Piotti because of the legislation. Dr. MacTaggart agreed, and suggested that the Commission should reiterate that the Representative might wish to recuse himself to avoid the appearance of a conflict of interest. Chair Ketterer requested that Mr. Wayne draft a letter responding to Representative Piotti's inquiry.

Agenda Item #2 - PAC Contribution Reporting Issue

The witnesses having arrived at the meeting, the Commission members resumed their consideration of this item. At its June 18, 2003 meeting, the Commission directed its staff to solicit public comment on how a contributor's payment to a vendor for a good or service received by a PAC should be reported. Mr. Wayne mailed a request for public comment, and three written responses were received, which were distributed to the members of the Commission.

Chair Ketterer invited the individuals present at the meeting to offer any oral comment on the issue. Roy Lenardson made a presentation on behalf of Casinos *NO!* and as a treasurer of other PAC's. He stated that reporting contributors' direct payments to vendors as in-kind contributions makes the payments less accessible for the public, because in-kind contributions cannot be searched on the Commission's Web site according to payee, as expenditures can. He stated that members of the public are not likely to look at the in-kind contribution pages of the Web site.

Arn Pearson, the Executive Director of the Maine Citizen Leadership Fund (MCLF), stated that the organization did not have a position on the casino issue. He said that he believed the Commission could address the issue through an application of the current law, and that it does not appear to matter whether the payments are reported as cash or in-kind contributions.

Mr. Pearson expressed the concern that when a contributor collects money from another party and spends it on a ballot question, there's a problem if the original source of the funds is not disclosed. Mr. Ott asked how that Mr. Pearson's point would apply to Think About It's contributors. Mr. Pearson responded that in the case of contributions reportedly made by Tom Tureen, if the money is coming from Mr. Tureen, then there would not appear be a problem. If Mr. Tureen was soliciting or receiving money from someone else and using it to make the payments on behalf of Think About It, then Mr. Tureen might have to file a separate report.

Mr. Wayne stated that he had sent a letter to Think About It inquiring whether Tom Tureen has been reimbursed for his payments. Erin Lehane responded in writing on behalf of the PAC, and stated that some of Mr. Tureen's payments have been reimbursed by Marnell Carrao. In addition, Ms. Lehane had said to Mr. Wayne by telephone that Marnell Carrao has not accepted contributions from any other source.

Mr. Pearson said that from his organization's perspective, Think About It has not done anything improper, but that Tom Tureen may be required to register as a PAC or file a 1056-B campaign finance report.

Dr. MacTaggart asked for MCLF's position on the four options before the Commission for reporting contributors' direct payments to vendors. Mr. Pearson stated that he had not had an opportunity to discuss the options with Mr. Wayne. He stated that the option of requiring contributors to make payments to a PAC raises a First Amendment problem because a contributor may wish to pay for an advertisement directly in order to control the

content of the advertisement. Mr. Pearson stated that he believes it's not necessary to change the reporting forms, adopt new rules, or pass legislation to address the issue.

The Chair invited Mr. Wayne to make a recommendation to the Commission members. Mr. Wayne responded that the Commission staff would be able to accommodate whatever reporting system the members of the Commission chose, but that his recommendation was that contributors' direct payments to vendors for goods and services received by PAC's should be reported as in-kind contributions on Schedule C of the PAC reporting form.

Mr. Ott asked Mr. Wayne whether he could address Mr. Pearson's suggestion that existing rules and law cover the problem of Think About It's contributors.

Mr. Wayne stated that it appeared that the payments by Think About It's contributors had been correctly reported by the PAC. The payments were reported as in-kind contributions on Schedule C of the PAC reporting form. The public has access to the information, although a question has been raised whether the public knows where to look for it.

Dr. MacTaggart asked how Mr. Pearson's suggestion could be effectuated. Mr. Wayne stated that the Commission has the option of writing a letter to Think About It asking whether Mr. Tureen and Marnell Carrao have received any funds from other sources that have funded their contributions.

Chair Ketterer stated his concern that, with the 2003 general election approaching, the Commission should recommend a uniform procedure regarding contributors' direct payments to vendors for goods and services. He stated that the Commission staff has made a recommendation that contributors' payments should be reported as in-kind contributions on Schedule C, and that he would be in favor of adopting it, recognizing that it was not a perfect solution. He stated that adding a new schedule would complicate the reporting forms and that there are constitutional problems with requiring that contributors' payments be made directly to the PAC.

Mr. Ott moved that the staff should prepare a communication that would be disseminated to interested parties that contributors' payments be reported as in-kind contributions on Schedule C of the reporting form. Dr. MacTaggart seconded the motion, and the members voted unanimously in favor of it.

Agenda Item #14 - Other

Representative Roderick Carr asked the Commission staff during a visit whether his 2002 campaign could transfer around \$1,600 in surplus funds to his leadership PAC. After examining the relevant section of the Election Law, the Commission members requested that the Executive Director advise Representative Carr that the surplus funds could be transferred to his leadership PAC pursuant to 21-A M.R.S.A. §1017(8)(E).

There being no further business, the Commission adjourned.

Dated: September ___, 2003

Respectfully submitted,

Jonathan Wayne
Executive Director